

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JOSE MARIA ALVES DECASTRO, et al., :

Plaintiffs, :

-against- :

DEEPAK KAVADIA, et al., :

Defendants. :

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**REPORT AND  
RECOMMENDATION**

**DEBRA FREEMAN, United States Magistrate Judge:**

Currently before this Court is the application of plaintiffs Jose Maria Alves DeCastro and DJJ-Mining & Services (Private) Limited (collectively, "Plaintiffs"), for \$7,812.00 in attorney's fees incurred in connection with their motion for discovery sanctions. (*See* Plaintiffs' Notice of Motion to Impose Sanctions, dated Jan. 29, 2015 (Dkt. 150) ("Notice of Motion"); Declaration of Mathew J. Harris in Support of Plaintiffs' Motion to Impose Sanctions, dated Jan. 29, 2015 ("Declaration in Support") (Dkt. 152).) For the reasons set forth below, I recommend that Plaintiffs' fee application be denied.

**PROCEDURAL HISTORY**

Plaintiffs make this application in accordance with the Order of the Honorable Analisa Torres, U.S.D.J., dated July 6, 2015 (Dkt. 186), resolving Plaintiffs' motion for discovery sanctions by adopting the Report and Recommendation issued by this Court on May 13, 2015. (Dkt. 184). In that Order, Judge Torres imposed sanctions against defendants Deepak Kavadia and Nice Gems, Inc., and their counsel, Andrew Lavoot Bluestone, Esq., and directed that Plaintiffs be awarded the reasonable fees and costs of their sanctions motion, in amount to be determined by this Court. (*See* Dkt. 186, at 6.) On August 30, 2015, Plaintiffs

filed a fee application in accordance with the July 6 Order, seeking an award of \$7,812.00.

(Letter to the Court from Matthew J. Harris, Esq., dated Aug. 30, 2015 (“Pl. Fee App.”)

(Dkt. 196).)

Upon review of Plaintiffs’ fee application, however, this Court noted that there were several aspects of the application that raised doubts as to whether the listing of hours submitted by Plaintiffs’ attorney, Matthew J. Harris, Esq. (“Harris”), was actually a contemporaneous time record. By Order dated October 23, 2015, the Court therefore directed Plaintiffs to supplement their submission by filing an affidavit or declaration from counsel, detailing the process by which the time records underlying the application were maintained. (Dkt. 199.) In that Order, the Court cautioned Plaintiffs that a failure to demonstrate that counsel’s fee records were maintained contemporaneously with the work performed might result in this Court’s recommending that no fees be awarded, despite the Court’s sanctions ruling. (*Id.*)

On October 27, 2015, in response to this Court’s Order, Harris filed a letter stating, in its entirety:

With reference to your order concerning the fee application I have filed with the Court, I am unable to represent that it was based on contemporaneous records.

Inexperienced as I am in Federal litigation, I thought that the “reasonableness” of the fees was the only requirement. I will say that I believe the fees I submitted were reasonable.

(Dkt. 200.)

### **DISCUSSION**

As stated in the Court’s October 23 Order, the maintenance of contemporaneous time records is a prerequisite to *any* award of attorneys’ fees in this Circuit. (*See* Dkt. 199; *see also* *Scott v. City of New York*, 626 F.3d 130, 133-34 (2d Cir. 2010) (citing *N.Y. State Ass’n for*

*Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1147-48 (2d Cir. 1983)).) Thus, even if Harris's requested fee is the product of a reasonable number of hours performed at a reasonable hourly rate, attorney's fees must not be awarded unless counsel recorded those hours at the time he performed the work in question. *See Kottwitz v. Colvin*, No. 14-CV-2677 (PGG)(SN), 2015 WL 293821, \*3 (S.D.N.Y. July 14, 2015) (holding that counsel's efforts to "cobble together a historical account of time expended based on work records" was contrary to the legal standard and inadequate as a factual matter); *Ermenegildo Zenga Corp. v. 56th St. Menswear, Inc.*, No. 06 Civ. 7827 (HB) (GWG), 2008 WL 4449533, at \*6 (S.D.N.Y. Oct. 2, 2008) ("[C]ourts routinely decline to award fees when a party submits a fee request that fails to indicate that it is based on contemporaneous time records.").

Harris's inability to represent that his fee application was based on contemporaneous time records therefore precludes any award of attorney's fees with respect to Plaintiffs' motion for sanctions.

### **CONCLUSION**

For the foregoing reasons, I recommend that Plaintiffs' application for an award of attorney's fees in the amount of \$7,812.00 be DENIED.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6 (allowing three additional days for service by mail). Such objections, and any responses to objections, shall be filed with the Clerk of Court, with courtesy copies delivered to the chambers of the Honorable Analisa Torres, United States Courthouse, 500 Pearl Street, Room 2210, New York, New York 10007, and to the chambers of the undersigned, United States Courthouse, 500 Pearl Street, Room 1660, New York, New York

10007. Any requests for an extension of time for filing objections must be directed to Judge Torres. FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. *See Thomas v. Arn*, 474 U.S. 140, 155 (1985); *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1054 (2d Cir. 1993); *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *Wesolek v. Canadair Ltd.*, 838 F.2d 55, 58 (2d Cir. 1988); *McCarthy v. Manson*, 714 F.2d 234, 237-38 (2d Cir. 1983).

Dated: New York, New York  
October 29, 2015

Respectfully submitted,

  
DEBRA FREEMAN  
United States Magistrate Judge

Copies to:

All counsel (via ECF)